

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**LEROY WILLIAMS,**

\*

**Plaintiff,**

\*

\*

**v.**

**Civil Action No.:  
2:06-cv-658-ID**

**STATE OF ALABAMA DEPT. OF  
TRANSPORTATION, et. al.**

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\*

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**Defendant.**

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**PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S SUPPLEMENTAL  
EVIDENTIARY SUBMISSION OR IN THE ALTERNATIVE TO SUBMIT  
ADDITIONAL EVIDENTIARY MATERIALS**

Comes now the plaintiff and moves this Honorable Court to strike Defendant's Supplemental Evidentiary Submission, or in the alternative, to allow the submission of the attached evidentiary materials. In support of this motion, the plaintiff states as follows:

1. Pursuant to this Court's Uniform Scheduling Order, as amended, the defendants' summary judgment and evidentiary materials supporting that motion were due March 26, 2007. Doc. nos. 8 and 12. On June 5, 2007, Defendant's Supplemental Evidentiary Submission was submitted, containing *inter alia* a second affidavit of Joe E. Jones. Doc. no. 34. That affidavit attacks an element of plaintiffs' *prima facie* case and asserts that the plaintiff Leroy Williams was not replaced by a member of the non-protected class but by a black male. This issue was never raised in the defendant's summary judgment motion, summary judgment brief or original evidentiary submission. *See* Doc. nos. 13, 14, and 15.
2. Having failed to attack this element of the *prima facie* case in their original

submission, the defendants cannot now do so in their reply brief. The defendants have further sandbagged the plaintiff by raising this issue just two days prior to the discovery cutoff of June 7, 2007. The defendant's supplemental evidentiary submission, including the second affidavit of Joe E. Jones should be struck.

3. Mr. Jones' veracity, one of the officials recommending Mr. Williams demotion, is called into play by the defendants' own documents however. The plaintiff has previously submitted the defendants' Persons Promoted Report for the period of 2/16/06 to 3/15/06 as an evidentiary exhibit. This report is part of the monthly compliance reporting under both the *Reynolds* consent decree and the earlier *Frazier* injunction. That document is attached as Plaintiff's Exhibit Q to Mr. Williams' original evidentiary submission in opposition to the defendants' summary judgment motion (doc. no.32). Page three of that report shows that Channin Grantham (white male) was appointed into Position No. 1736405, which was the position previously occupied by Plaintiff, Leroy Williams as shown by the Certificate of Eligibles where Mr. Williams was promoted to the Transportation Technologist classification and the field supervisor position. *Compare* Plaintiff's Exhibit Q at page 3 to Plaintiff's Exhibit F.
4. Moreover, the Persons Promoted Report clearly states that the plaintiff, Leroy Williams, **was the previous incumbent for the position (1736405) into which Mr. Channin Grantham was promoted:**

418294532 Channin K Grantham	Male	White	03/04/2006	01736405	Transportation Technologist	100%/6372	1	Location
Cart of Elig:					Field Crew Supv			Location: Design Bureau County: Montgomery
								Previous Incumbent: Leroy Williams
								Race:Black Sex:Male

Pl. Ex. Q at 3.

5. In addition to the previously filed documents, other documents of the defendants' show that a white male was placed into Mr. Williams' position. The certificate of eligibles for Mr. Grantham shows the same position number (1736405) for his Transportation Technologist appointment as does the certificate of eligibles for Mr. Williams' appointment. *Compare* Pl. Ex. AA, attached hereto, *with* Pl. Ex. F (doc. no. 32).
6. Under the *Reynolds* consent decree, the defendants were also required to either abolish a vacated position or request to fill it within thirty days of the vacancy. The request to fill position document is then made a part of the appointment packet for the position. Mr. Grantham's appointment packet contains the request to fill for position number 1736405, previously held by plaintiff, which states that the reason for the vacancy is as follows:

**SUBJECT: Request to Fill/Not to Fill Vacant Position**

I hereby request to fill position number 1736405, classification  
(Fill/not fill) (PCQ #)  
Transp. Tech., option code 007, Design, in the Design Bureau  
(Name of Position) (Code Number) (Bureau/Division)  
Montgomery 051. The position became vacant effective 9/3/05  
(County/County Code) (Date)  
The previous incumbent was Leroy Williams 423-80-8026 B M  
(Name) (SSN) (Race) (Sex)

**THE CAUSE OF THE VACANCY WAS** (Resignation, Retirement, Transfer, etc.), Separation during probation

Pl. Ex. BB, attached. This request was submitted by William Adams, leader of the white intervenors in the *Reynolds* case, on September 8, 2005, just days after the plaintiff's rollback from his position of Transportation Technologist during his probation period.

7. Under the monthly reporting requirement of the *Reynolds* consent decree, a Position Classification Questionnaire is also placed in the appointment packet for each individual promoted or hired. Mr. Grantham's Position Classification Questionnaire shows position number 1736405 which is the same position number shown on Mr. Williams' Position Classification Questionnaire. *Compare* Pl. Ex. CC with Pl. Ex. DD.
8. Mr. Jones' affidavit also names Willie Primus as the black male who replaced Mr. Williams. As shown by Mr. Primus state personnel records, Mr. Primus became a Civil Engineer (class code 20480<sup>1</sup>), which classification was later renamed Transportation Technologist, in 1998 – more than seven years before Mr. Williams was demoted from Transportation Technologist in 2005. Pl. Ex. EE at 2.
9. Even if allowed, Joe E. Jones' Affidavit would merely create an issue of fact as to whether Leroy Williams was replaced by a member of a non-protected class.

For the foregoing reasons, Defendants' Supplemental Evidentiary Submission should be stricken or, in the alternative, Plaintiff should be allowed to submit the additional Evidentiary Submissions which are attached hereto as Exhibits AA, BB, CC, DD and EE.

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<sup>1</sup>The Civil Engineer classification was later divided into the Civil Engineer I/II and Civil Engineer III/IV classifications. The Civil Engineer I/II classification name was then changed to Transportation Technologist and the Civil Engineer III/IV classification name was changed to Transportation Technologist Senior.

Respectfully submitted,

/s/ Russell W. Adams

Counsel for Plaintiff

OF COUNSEL:

WIGGINS, CHILDS, QUINN & PANTAZIS, LLC  
301 19<sup>th</sup> Street North  
Birmingham, Alabama 35203  
(205) 314-0500

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 12<sup>th</sup> day of June, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jim R. Ippolito  
Andrew Redd  
Alabama Department of Transportation  
1409 Coliseum Boulevard  
Montgomery, Alabama 36110

s/ Russell W. Adams  
OF COUNSEL

# **EXHIBIT AA**

STATE OF ALABAMA  
Personnel Department

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# **EXHIBIT BB**



## ALABAMA DEPARTMENT OF TRANSPORTATION

1409 Coliseum Boulevard, Montgomery, Alabama 36110



September 8, 2005

Bob Riley  
GovernorJoe McInnes  
Transportation DirectorMEMORANDUMTO: Ronald J. Green  
ALDOT Personnel DirectorFROM: Don T. Arkle *DTA*  
Design Bureau Chief

SUBJECT: Request to Fill/Not to Fill Vacant Position

I hereby request to fill position number 1736405, classification  
 (fill/not fill) (PCQ #)  
Transp. Tech., option code 007 Design, in the Design Bureau  
 (Name of Position) (Code Number) (Bureau/Division)  
Montgomery 051. The position became vacant effective 9/3/05  
 (County/County Code) (Date)  
 The previous incumbent was Leroy Williams 423-80-8026 B M.  
 (Name) (SSN) (Race) (Sex).

THE CAUSE OF THE VACANCY WAS (Resignation, Retirement, Transfer, etc.). Separation during probation

REASON FOR REQUEST TO FILL POSITION: to continue field survey work without delays

 CHECK HERE IF THIS IS A REQUEST TO FILL THE VACANCY BY TRANSFER.

THIS POSITION REQUIRES: ( ) shift work during evening and night hours ( ) overnight travel

## POSITION WILL NOT BE FILLED FOR THE FOLLOWING REASON(S)

It is understood that any requests to fill or not to fill vacated positions must be forwarded to the Hiring and Promotions Bureau within seven (7) days from the occurrence of a retirement, resignation, termination, transfer, promotion or other action resulting in such vacancy.

If no request is made to fill the vacant position, the position number for the associated classification will be abolished.

Attachment

APPROVED:

*D. J. McInnes*  
 D. J. McInnes  
 Transportation Director

Sent to Director 9-12-05

DISAPPROVED:

*D. J. McInnes*  
 D. J. McInnes  
 Transportation Director
DATE: 9/12/05

# **EXHIBIT CC**

**POSITION CLASSIFICATION QUESTIONNAIRE**

STATE OF ALABAMA

Personnel Department

PCQ# 1736405

(For Dept Use Only)

1. Employee's Name \_\_\_\_\_
2. Classification Civil Engineer
3. Working Title Field Supervisor
4. Department Department of Transportation
5. Division or Bureau Design
6. Section or Unit Location Section
7. Work Location (County) Statewide
8. Name and title of immediate supervisor (person who assigns work) William F. Adams, Location Engineer
9. Position is: full-time  , part-time  , permanent  , temporary  .

10. SUPERVISION EXERCISED: Only complete this section if this position completes performance appraisals or actually participates in rating other employees. If the position functions as a lead worker and only assigns work, then list that responsibility on item 11B as a duty.

- a. Total number of employees that this position supervises:
- b. Percentage of time spent on supervision and related duties:
- c. If this position DIRECTLY supervises 5 or less employees, give names and titles. If this position DIRECTLY supervises 5 or more employees give the number and official classification of each.

- |  |                          |   |                          |
|--|--------------------------|---|--------------------------|
| d. As a supervisor, does this position: (Check the activities performed) |                          |   |                          |
| Make daily work assignments?   | <input type="checkbox"/> | Interview and make hiring recommendations?  | <input type="checkbox"/> |
| Approve and Disapprove leave requests?                                   | <input type="checkbox"/> | Recommend disciplinary actions?             | <input type="checkbox"/> |
| Reassign job duties on permanent basis?                                  | <input type="checkbox"/> | Prepare and conduct performance appraisals? | <input type="checkbox"/> |

**11. DESCRIPTION OF DUTIES PERFORMED:**

- a. In one or two sentences, describe the major purpose of this position.

To assign and oversee the daily operation of the survey crew.

Being responsible for all calculations, equipment, and problem solving related to the survey work both in the field and in the office, must be completely knowledgeable on all equipment and mathematics involved in survey work.

## b. Duty Statement: (Complete Column "C" first)

- In column A, indicate PERCENTAGE of time spent on each duty (total should not exceed 100%).
- In column B, rate the duties as to their IMPORTANCE. VI-Very Important I-Important SI-Somewhat Important
- In column C, describe in detail each of the position's PERMANENT duties and responsibilities using your OWN

A %	B rating	C Description of Duties
20	VI	Instructs employees so that project productivity standards are established and met with each project being completed.
20	VI	Assigns employees work so that all work is performed and productivity standards are met each day with each goal or project being completed.
15	VI	Operates personal computer so that information is transferred, compiled, and provided to designers.
15	VI	Oversees the gathering of all field survey information so that all pertinent project data can be compiled and provided to designers.
10	VI	Compiles information so that field maps, utility maps, profile maps, and requires pertinent project data are provided to designers.
10	VI	Trains employees so they are afforded the opportunity to learn correct surveying methods, and are able to perform assigned tasks at a fully competent level.
10	VI	Communicates orally with individuals so that instructions are received, information is properly exchanged, and problems are solved.

(Attach additional sheets if necessary)

12. DECISION MAKING: Give example(s) of the more important decisions made while performing the duties of this position. Then list the possible effect of error(s) on the organization or general public.

Progress of Field work, crew assignments, calculation accuracy and tolerance as well as format for submission.

13. FINANCIAL RESPONSIBILITY: If this position has responsibility for controlling and/or authorizing the expenditure of funds, please describe and indicate approximate amount controlled.

14. WORK GUIDELINES: (Only include written guidelines) List the specific laws, regulations, instructions, manuals, or procedures that must be followed in performing this job and describe how they are used.

LIST ITEM	HOW USED
AASHTO Manual	Set controls and develop designs that meet standards
Equipment Manual	Operating electronic level, H.P. 48, Geodimeter, and other electronic equipment
Guidelines for Operation	Daily operational procedures for knowledge of the job, Governs data collection accuracy and tolerances as well as format for submission
Geometric Design of Highways and Streets	Guidelines and policies for State Survey

How is this position's work reviewed? (Check one)

- [ X ] Supervisor reviews most or all of work while it is being done.  
 [ ] Supervisor spot checks work as it is being done.  
 [ ] Supervisor reviews most or all of work after completion.  
 [ ] Supervisor spot checks work after completion.  
 [ ] Supervisor does not review work.  
 [ ] Other. (describe fully)

16. WORK CONTACTS: With whom, outside of co-workers in this unit, must this position regularly come in contact?

Who Contacted	How (Phone, in person, etc.)	Purpose of Contact	How Often
General public	Phone, in person, etc.	Survey	Monthly
Courthouse	Phone, in person, etc.	Survey	Monthly
Utility	Phone, in person, etc.	Survey	Often
Property Owners	Phone, in person, etc.	Survey	Often

17. EQUIPMENT USED: List any equipment used regularly. Give percent of time spent in operation of each. For vehicles and construction and maintenance equipment operated, indicate capacity, e.g., tonnage, yardage.

Total Station	20%	Electronic Level	10%
Data Collector	10%	Geodimeter/Nikon	10%
Digital Planimeter	10%	Carry all	5%
H.P. 48 Calculator	10%		

a. Does this position require typing?

[ x ] NO

[ ] YES--Give % of time spent in typing [ ] %

b. Does this position require taking shorthand?

[ x ] NO

[ ] YES--Give % of time spent in shorthand

%

18. Are the statements of the employee accurate and complete? (Indicate inaccuracies and incomplete items)  
N/A

19. If duties listed are for reallocation of position, what additional and/or more complex duties have been added warrant reallocation.  
N/A

20. List any required licenses, registrations, certifications, or special requirements necessary to perform the job  
N/A

21. Check below the type of supervision provided by the immediate supervisor to this position.  
[ ] CLOSE/HANDS ON      or      [ X ] GENERAL/ADMINISTRATIVE

22. Additional information and comments (additional sheets may be attached, if necessary).

**VERIFICATION - READ CAREFULLY BEFORE SIGNING**

I hereby certify that I have read the above and verify that it is , to the best of my knowledge, correct and accurate.  
I understand that disciplinary action could be taken against anyone who knowingly provides false information.

**Signature of Incumbent** William F. Adams **Date** 9/8/05 **Telephone # (ATTNET)** 242-6175  
**Signature of Supervisor**  **Date**  **Title/Classification** Coronavirus PCET **Telephone # (ATTNET)** 242-6488

**Signature of Appointing Authority**      **Date**      **Telephone # (ATTNET)**

# **EXHIBIT DD**

# POSITION CLASSIFICATION QUESTIONNAIRE

STATE OF ALABAMA  
Personnel Department

**PCQ# 01736405**  
(For Dept Use Only)

1. Employee's Name
2. Classification Transportation Technologist
3. Working Title Field Supervisor
4. Department Department of Transportation
5. Division or Bureau Design
6. Section or Unit Location Section
7. Work Location (County) Statewide
8. Name and title of immediate supervisor (person who assigns work) Joe E. Jones, Trans. Manager.
9. Position is: full-time  , part-time  , permanent  , temporary  .
10. SUPERVISION EXERCISED: Only complete this section if this position completes performance appraisals or actually participates in rating other employees. If the position functions as a lead worker and only assigns work, then list that responsibility on item 11B as a duty.
  - a. Total number of employees that this position supervises: 4
  - b. Percentage of time spent on supervision and related duties: 65%
  - c. If this position DIRECTLY supervises 5 or less employees, give names and titles. If this position DIRECTLY supervises 5 or more employees give the number and official classification of each.

2 EA II/III	2 EA I
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- d. As a supervisor, does this position: (Check the activities performed)

Make daily work assignments?	<input checked="" type="checkbox"/>	Interview and make hiring recommendations?	<input type="checkbox"/>
Approve and Disapprove leave requests?	<input type="checkbox"/>	Reassign job duties on permanent basis?	<input type="checkbox"/>
Recommend disciplinary actions?	<input checked="" type="checkbox"/>	Prepare and conduct performance appraisals?	<input checked="" type="checkbox"/>

11. DESCRIPTION OF DUTIES PERFORMED:

- a. In one or two sentences, describe the major purpose of this position.

<u>I oversee the daily operation of the survey crew in the field. I am responsible for all calculations, equipment, and problem solving related to the survey work in the field. I must be completely knowledgeable on all equipment and mathematics involved in survey work.</u>
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- In column A, indicate PERCENTAGE of time spent on each duty (total should not exceed 100%).
- In column B, rate the duties as to their IMPORTANCE. VI-Very Important I-Important SI-Somewhat Important
- In column C, describe in detail each of the position's PERMANENT duties and responsibilities using your OWN words.

A	B	C
%	rating	Description of Duties
65	VI	Oversee the gathering of all field survey information so that all pertinent project data can be compiled and required maps can be completed.
5	I	Assist the Party Chief in organizing and prioritizing the different phases of the survey field operation so that progress is maximized and delays are minimized
5	I	Coordinate data downloads and information exchange with the Data Editor so that errors are held to a minimum and to insure that data is complete as well as accurate.
10	VI	Assign employees work so that all work is performed and productivity standards are met each day with each goal or project being completed in the field operations.
5	I	Instruct employees so that project productivity standards are established and met with each project being completed
5	VI	Trains employees so they are afforded the opportunity to learn correct surveying methods and are able to perform assigned tasks at a fully competent level.
3	I	Communicate orally with individuals so that instructions are received, information is properly exchanged, and problems are solved.
2	I	Solve conflicts between personnel in the field crew so that operations are not hampered and so that morale and cooperation is maintained

(Attach additional sheets if necessary)

12. DECISION MAKING: Give example(s) of the more important decisions made while performing the duties of this position. Then list the possible effect of error(s) on the organization or general public.

Progress of Field work – so as to maintain schedules and not cause delays in completing the survey
Individual Assignments—so as to maintain a logical workflow and eliminate confusion and friction between personnel
Calculation accuracy and tolerance—so as to insure avoiding wasting time being overly accurate when not needed and/or insuring that proper accuracies are maintained for certain data when needed

13. FINANCIAL RESPONSIBILITY: If this position has responsibility for controlling and/or authorizing the expenditure of funds, please describe and indicate approximate amount controlled.


14. **WORK GUIDELINES:** (Only include written guidelines) List the specific laws, regulations, instructions, manuals, or procedures that must be followed in performing this job and describe how they are used.

LIST ITEM	HOW USED
AASHTO Manual	Set controls and develop designs that meet standards
Equipment Manual	Operating electronic level, H.P. 48, Geodimeter, and other electronic equipment
Guidelines for Operation	Daily operational procedures for knowledge of the job, Governs data collection accuracy and tolerances as well as format for submission
Geometric Design of Highways and Streets	Guidelines and policies for State Survey

How is this position's work reviewed? (Check one)

- [ ] Supervisor reviews most or all of work while it is being done.  
 [X] Supervisor spot checks work as it is being done.  
[ ] Supervisor reviews most or all of work after completion.  
[ ] Supervisor spot checks work after completion.  
[ ] Supervisor does not review work.  
[ ] Other. (describe fully)

16. **WORK CONTACTS:** With whom, outside of co-workers in this unit, must this position regularly come in contact?

Who Contacted	How (Phone, in person, etc.)	Purpose of Contact	How Often
General public	Phone, in person, etc.	Survey	Monthly
Courthouse	Phone, in person, etc.	Survey	Monthly
Utility	Phone, in person, etc.	Survey	Often
Property Owners	Phone, in person, etc.	Survey	Often

17. **EQUIPMENT USED:** List any equipment used regularly. Give percent of time spent in operation of each. For vehicles and construction and maintenance equipment operated, indicate capacity, e.g., tonnage, yardage.

Total Station	30%	Electronic Level	5%
Data Collector	10%	Carry all	5%
H.P. 48 Calculator	10%		

- a. Does this position require typing?

[x] NO

[ ] YES--Give % of time spent in typing [ ] %

- b. Does this position require taking shorthand?

[x] NO

[ ] YES--Give % of time spent in shorthand %

**ITEMS TO BE COMPLETED BY IMMEDIATE SUPERVISOR AND/OR APPOINTING AUTHORITY**

18. Are the statements of the employee accurate and complete? (Indicate inaccuracies and incomplete items)  
YES

19. If duties listed are for reallocation of position, what additional and/or more complex duties have been added to this position to warrant reallocation.  
N/A

20. List any required licenses, registrations, certifications, or special requirements necessary to perform the job.  
N/A

21. Check below the type of supervision provided by the immediate supervisor to this position.  
 CLOSE/HANDS ON      or       GENERAL/ADMINISTRATIVE

22. Additional information and comments (additional sheets may be attached, if necessary).

Item #	The reason for this form 40 is to fill an existing position.
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**VERIFICATION - READ CAREFULLY BEFORE SIGNING**

I hereby certify that I have read the above and verify that it is, to the best of my knowledge, correct and accurate.  
I understand that disciplinary action could be taken against anyone who knowingly provides false information.

---

**Signature of Incumbent** \_\_\_\_\_ **Date** \_\_\_\_\_ **Telephone # (ATTNET)** **334-242-6798**

*Sgt. E. Jones* 6/22/04 Transportation Manger/CEM 242-6798 220-6798  
Signature of Supervisor Date Title/Classification Telephone # (ATTNET)

**Signature of Appointing Authority**      **Date**      **Telephone # (ATTNET)**

# **EXHIBIT EE**

SPD Data Files

WILLIE JOE PRIMUS

Race: B Sex: M

**SPD Data Files****Master Activity Log Records For: 423-82-1977 WILLIE JOE PRIMUS****Race: B Sex: M**

SSN	Action Date	Class Code	Position	Emp Date	Probation End	Leave Begin	Leave End	Sep Date	Re-emp Date	Reserve Date	Pay Rate	Agency
423-82-1977	20020810	20480	439 23 HWY	1734369	19910126	6 1 0	13 0 N	0 0	0 0	0 0	85 51	6978.09 1,230.50
423-82-1977	20020907	20480	439 21 HWY	1734369	19910126	6 1 0	13 0 N	0 0	0 0	0 0	85 51	6978.09 1,267.40
423-82-1977	20040904	20481	439 263 HWY	1734369	19910126	6 1 0	13 0 N	0 0	0 0	0 0	85 51	6972.09 1,267.40
423-82-1977	20050408	20481	7 170 HWY	1734369	19910126	6 1 0	13 0 N	0 0	0 0	0 0	85 51	6972.09 1,012
423-82-1977	20050806	20481	7 23 HWY	1734369	19910126	6 1 0	13 0 N	0 0	0 0	0 0	85 51	6972.11 1,012
423-82-1977	20050903	20481	7 21 HWY	1734369	19910126	6 1 0	13 0 N	0 0	0 0	0 0	85 51	6972.11 1,330.90
423-82-1977	20060304	20481	7 300 HWY	1734369	19910126	6 1 0	13 0 N	0 0	0 0	0 0	85 51	6972.11 1,410.80
423-82-1977	20060801	20481	7 23 HWY	1734369	19910126	6 1 0	13 0 N	0 0	0 0	0 0	85 51	6972.11 1,528.40
423-82-1977	20060901	20481	7 21 HWY	1734369	19910126	6 1 0	13 0 N	0 0	0 0	0 0	85 51	6972.13 1,605.40
											1 012	1,685.70